

# EXHIBIT A

B & R SUPERMARKET, INC., d/b/a	X	
MILAM’S MARKET, a Florida	:	Case No. 1:17-cv-02738-MKB-VMS
corporation, et al., Individually and on	:	
Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiffs,	:	Judge Margo K. Brodie
	:	
v.	:	
	:	
VISA, INC., et al.,	:	
	:	
Defendants.	X	

I, JAMES F. HERBISON, hereby declare and state as follows:

2. I am a partner at Winston & Strawn LLP and counsel for Defendant Discover Financial Services.

3. We have identified 57 Federal and State officials (the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and United States Territories) to receive CAFA notice of the proposed Settlement Agreement between Plaintiffs and Discover in the above-referenced action.

4. On July 3, 2025, Winston & Strawn LLP sent 57 CAFA Notice Packages (“Notice”). The Notice was mailed via USPS Priority Mail to all 57 federal and state officials. The Notice is included as **Attachment 1**.

5. The Notice was comprised of a cover letter, service list, and the following documents, which were made available electronically with an optional CD made available by request:

- **Per 28 U.S.C. § 1715(b)(1)** – Copies of the following complaints and the materials filed therewith, including:
  - Class Action Complaint, filed on March 8, 2016; and
  - Amended Class Action Complaint, filed on July 15, 2016.
- **Per 28 U.S.C. § 1715(b)(3)** – A copy of the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan, dated June 3, 2022, accompanied by all supporting documents and exhibits, including:
  - Postcard Form; and
  - Long Online Form.
- **Per 28 U.S.C. § 1715(b)(4)** – Plaintiffs’ Motion for Preliminary Approval of Settlement with Discover and Amex filed on June 24, 2025, and pertinent exhibits attached thereto, including the following:
  - Memorandum of Law in Support of Motion for Preliminary Approval of Settlement with Discover and Amex;
  - Declaration of George C. Aguilar in Support of Motion for Preliminary Approval of Settlement with Discover and Amex and pertinent attachments; and
  - Plaintiffs’ Letter to the Court regarding Plaintiffs’ Motion for Preliminary Approval of Settlement with Discover and Amex.

- **Per 28 U.S.C. § 1715(b)(8)** – Copies of the following “written judicial opinion relating to” this “proposed . . . class action settlement”:
  - Memorandum Opinion and Order denying Discover’s Motion for Summary Judgment, issued on September 27, 2024.
- **Per 28 U.S.C. § 1715(b)(7)** – A reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of the members to the entire settlement was not feasible. An estimate of total nationwide Class Members was provided as part of the Notice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
July 10, 2025.

/s/ James F. Herbison

James F. Herbison

# **Attachment 1**

**JAMES F. HERBISON**  
Partner  
(312) 558-5909  
JHerbison@winston.com

July 3, 2025

**VIA U.S. CERTIFIED MAIL**

Hon. Pamela J. Bondi  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20531

The State Attorneys General  
and other “appropriate State officials,”  
as defined by 28 U.S.C. § 1715(a)(2)  
(See attached Distribution List)

**Re: Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715  
B & R Supermarket, Inc. et al. v. Visa, Inc., et al., No. 1:17-cv-02738-MKB-JAM  
(E.D.N.Y.)**

To Whom It May Concern:

I write on behalf of Discover Financial Services (“Discover”) in relation to the above-referenced action currently pending in the United States District Court for the Eastern District of New York before the Honorable Chief Judge Margo K. Brodie.

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, please find enclosed information to advise you of a proposed class action settlement between named Plaintiffs B & R Supermarket, Inc., d/b/a Milam’s Market (“Milam’s Market”), Grove Liquors LLC (“Grove Liquors”), Strouk Group LLC, d/b/a Monsieur Marcel (“Monsieur Marcel”), and Palero Food Corp. and Cagueyes Food Corp., d/b/a Fine Fare Supermarket (“Fine Fare”), for themselves individually and on behalf of each member of the Class (as defined herein) (collectively, “Class Members”) and Discover Financial Services (“Discover”) in the above-referenced action.

On June 24, 2025, the Class filed a Motion for Preliminary Approval of Settlement with Discover and American Express (“Amex”) in the above-referenced action.

In compliance with 28 U.S.C. § 1715(b), the following documents referenced below may be downloaded from Winston & Strawn LLP’s secure Box site:

**URL:**



**Password:** [REDACTED]

Please note that this link will expire on [REDACTED]. We will also provide a CD containing electronic copies of all identified documents upon request.

- Copies of the following complaints and the materials filed therewith, including:
  - Class Action Complaint, filed on March 8, 2016 (Attachment 1-A); and
  - Amended Class Action Complaint, filed on July 15, 2016 (Attachment 1-B).
- Plaintiffs' Motion for Preliminary Approval of Settlement with Discover and Amex filed on June 24, 2025 (Attachment 2-A), accompanied by all supporting documents and exhibits, including the following:
  - Memorandum of Law in Support of Motion for Preliminary Approval of Settlement with Discover and Amex (Attachment 2-B);
  - Declaration of George C. Aguilar in Support of Motion for Preliminary Approval of Settlement with Discover and Amex (Attachment 2-C) and pertinent exhibits attached thereto (Attachments 2-D through 2-N); and
  - Plaintiffs' Letter regarding Plaintiffs' Motion for Preliminary Approval of Settlement with Discover and Amex (Attachment 2-O).
- A copy of the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan, dated June 3, 2022, (Attachment 3-A), accompanied by all supporting documents and exhibits, including:
  - Postcard Form (Attachment 3-B); and
  - Long Online Form (Attachment 3-C). *See* 28 U.S.C. § 1715(b)(3)(A).
- Copies of the following "written judicial opinion relating to" this "proposed . . . class action settlement":
  - Memorandum Opinion and Order denying Discover's Motion for Summary Judgment, issued on September 27, 2024 (Attachment 4-A). *See* 28 U.S.C. § 1715(b)(8).

The proposed settlement is with the certified Class, which is defined per the Court's August 28, 2020 Order granting the Plaintiffs' renewed motion for class certification (Attachment 5-A) as: "Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015

through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks (the “Class”).

Specifically excluded from the Class are: “members of the judiciary and government entities or agencies.” *Id.* Also excluded from the Class are those who previously excluded themselves from this Action by filing a request for exclusion with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022, and the Class Notice pursuant thereto previously provided to Class Members.

It is not feasible for Discover to provide either “the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement.” *See* 28 U.S.C. § 1715(b)(7)(A). The Memorandum of Law in Support of Motion for Preliminary Approval states that the Class consists of “approximately 400,000 merchants” (*see* Attachment 2-B at 2), so Discover’s “reasonable estimate of the number of class members” is 400,000 Class Members in total. *See* 28 U.S.C. § 1715(b)(7)(B).

Given that the settlement consists of Discover waiving its rights to seek costs, fees, attorney’s fees, or any other form of recovery against the Class in exchange for the Class agreeing that it will waive all appellate rights or further adjudication against Discover, it is not feasible for Discover to provide “the estimated proportionate share of the claims of such members to the entire settlement.” *Id.* As stated in the Memorandum of Law in Support of Motion for Preliminary Approval, the settlement consideration is “significant” and “avoid[s] the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation.” *See* Attachment 2-B at 2.

The Court has not yet set a hearing date on Plaintiffs’ Motion for Preliminary Approval of Settlement with Discover and Amex. *See* 28 U.S.C. § 1715(b)(2). As of the date of this correspondence, no other settlement or agreement has been entered into between the Class and Discover, there has not been any other approved notice of settlement, and no other final judgment or notice of dismissal by Plaintiffs has been entered. *See* 28 U.S.C. § 1715(b)(3)–(6).

This letter and the enclosed documents are intended to satisfy any and all notification obligations Discover has pursuant to CAFA with respect to this action. Please let me know if you have any questions regarding this notice, the settlement, how to access and view the documents on the enclosed Box link, or if you need to request a new Box link.

Sincerely,



James F. Herbison

*Counsel for Discover Financial Services*



Enclosures

### Distribution List

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